IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 295 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

S.G. CHEMICALS & PHARMACEUTICALS LTD

Appearance:
MR BB NAIK for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 12/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

The Income-Tax Appellate Tribunal, Ahmedabad Bench "C", has referred the following questions for the opinion of this Court:

R.A. No.781/Ahd/1987
At the instance of the CIT:
(i). Whether, the cost of plant and machinery under erection as also the cost of

building under construction was to be included in the capital base for purposes of deduction under Section 80J of the I.T.Act,1961?

R.A.No.782/Ahd/1987
At the instance of the CIT:
(ii) Whether the assessee is entitled to investment allowance in respect of the amount paid as a result of the fluctuation in exchange rate?

R.A.No.804/Ahd/1987
At the instance of the assessee.
(iii) Whether the amount of Rs.28,79,813/claimed by way of exchange loss consequent to the fluctuation in exchange rate was allowable as a deduction?

2. So far as question no.(i) is concerned, the I.T.O. has rejected the assessee's claim to the effect that the plant and machinery under erection and building under construction should be included in the computation of capital employed for the purpose of deduction under Section 80J of the Income-Tax Act, 1961. However, the claim was accepted by the Commissioner of Income-Tax (Appeals) relying on the decision of this Court in CIT Vs. Cibatul Limited reported in 115 ITR 879. The Tribunal, following the decision of this Court, confirmed the order of the C.I.T. (Appeals). The decision of this Court in Cibatul (Supra) was followed in C.I.T. vs. Gujarat State Fertiliser Co.Ltd. reported in 219 G.L.R. 550. In C.I.T. Vs. Alcock Ashdown and Co.Ltd reported in 224 ITR 353, the decision of this Court in Cibatul Limited was approved. The decision in Alcoc (Supra) was followed by the Supreme Court in C.I.T Vs Karnataka Power Corporation reported in 247 ITR 268. In the above view of the matter, we hold that the Tribunal was right in holding that the cost of plant and machinery under erection as also the cost of building under construction was to be included in the capital raised for the purpose of deduction under Section 80J of the said Act. The said question is, therefore, answered in the affirmative against the revenue and in favour of the assessee.

3. As regards the question no.(ii) as to whether the assessee was entitled to investment allowance in support of the amount paid as a result of the fluctuation in exchange rate, the Tribunal relying upon its earlier decision in Windsor Foods Ltd Vs. ITO held that the

amount pertaining to the principal would qualify for investment allowance. The Division Bench of this Court, considering the earlier decision of the Tribunal, in C.I.T. Vs. Windsor Foods Ltd.,235 ITR 249 has held that the Appellate Tribunal was wrong in holding that the assessee was entitled to the deduction on investment allowance on the amount of additional liability. It was held that no question of reducing full amount of investment allowance which was already worked out in the relevant previous year can ever arise by virtue of any subsequent fluctuation in the exchange rate. Relying on the decision of this Court in C.I.T. Vs. Windsor Foods Ltd. (Supra), we hold that the Tribunal was wrong in holding that the assessee was entitled to investment allowance in respect of the amount paid as a result of fluctuation in exchange rate. The question no.(ii) is, therefore, answered in the negative in favour of the revenue and against the assessee.

4. The third question is at the instance of the assessee who claimed that the exchange loss consequent upon the fluctuation in exchange rate was allowable as a deduction. In this regard, considering the similar claim and relying upon the Supreme Court decision in Sutlej Cotton Mills Ltd. Vs. C.I.T. West Bengal, reported in 116 I.T.R. page 1, this Court has held in C.I.T. Vs. Windsor Foods Ltd. (Supra) that the additional liability arising due to fluctuation in exchange rate was clearly referable to liability of a capital nature and not to liability on revenue account. It was held that the Tribunal was right in holding that the said additional liability was not revenue expenditure. For the same reasons, we hold that the amount of Rs.28,79,813/claimed by way of exchange loss consequent to the fluctuation in exchange rate was not allowable as deduction. The question no.(iii) is accordingly answered against the assessee and in favour of the revenue. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani,J.)

(Kundan Singh,J.)

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